IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/10/2003

CORAM

THE HONOURABLE MR. JUSTICE D. MURUGESAN

WRIT PETITION No.18077 of 2003
and W.P.Nos.118013,18659,18971,18598, 19188,19262,19471,20822
and 21238 of 2003

W.P.No.18077/2003

Namakkal Mavatta Anaithu Tourist
Maxicab Van Urimaiyalargal and
Ootunargal Kootamaipppu Represented
by its Secretary K. Udyakumar
No.218, Main Road, Namakkal. .. Petitioner

-Vs-

1. The State of Tamil Nadu rep. By
its Secretary, Home(Transport) Department
Fort St. George, Chennai.9.

2. The Transport Commissioner-cum-State
Transport Authority
Chennai.5.

3. Regional Transport Officer
Namakkal.

4. Regional Transport Officer
Tiruchengodu

5. Regional Transport Officer
Salem

6. Regional Transport Officer
Tiruchi .. Respondents

Petition filed under Article 226 of The Constitution of India, praying this Court to issue a Writ of Declaration declaring that Section 4 of the Tamil Nadu Motor Vehicles Taxation Amendment Act 13 of 2003 insofar as it purports to substitute the rate of tax from Rs.250/- to Rs.500/- per seat per quarter for Maxicabs in respect of vehicles of the members of the Petitioners Association is arbitrary, illegal unconstitutional and void.

!For petitioners .... Mr.G.Rajagopalan
in W.P.No.18077& Senior Counsel for
18598 &19262/2003 Mr. K. Uppili

For petitioner in
WP 19471/2003 .... Mr. G. Karthikeyan

For petitioner in
WP No.18013/2003 .... Mr. S. Govindaraman

For petitioner in
WP No.18659/2003 .... Mr.T.R. Rajagopalan Senior
counsel for Mr.R.N.Amarnath

For petitioner in
WP No. 19188/2003 ... Mr.M. Thivijayapandian

For petitioner in
WP No. 18971/2003 ... Mr. N.Gopalakrishnan

For petitioner in
WP No. 20822/2003 ... Mr.P. Rajendran

For petitioner in
WP No.21238/2003 ... Mr.V. Ramesh

^For respondents in all
W.Ps. .. Mr. R. Muthukumaraswamy
Addl.Advocate General
assisted by Mr.P.Chandra-
sekaran Special Govern-
ment Pleader,
Mr. Sanjay Ramaswamy
Addl.Govt. Pleader
and Mr. P.D.Audikesavalu

:COMMON ORDER

Since the issues involved in these Writ Petitions are one and the same, all the Writ Petitions are taken up together and disposed by this Common Order.

2. The petitioners are Associations of various Maxicabs owners. They have filed these Writ Petitions for declaration declaring Section 4 of the Tamil Nadu Motor Vehicles Taxation Amendment Act 13 of 2003 insofar as it purports to substitute the rate of tax from Rs.250/- to Rs.500/- per seat per quarter for Maxicabs in respect of the vehicles of the Members of the Petitioners Associations is arbitrary, illegal, unconstitutional and void.

3. The Petitioners are Registered Associations registered under

Societies Registration Act. The Members of the petitioners-Associations are owning Maxicabs covered by Contract Carriage Permits to ply throughout the State of Tamil Nadu as well in other States, pursuant to All India Tourist Maxicabs Permits. The Government of Tamil Nadu enacted Tamil Nadu Motor Vehicles Taxation Act, 1974 (hereinafter called as "The Act") to consolidate and amend the law relating to the levy of tax on motor vehicles in the State of Tamil Nadu. As per Section 3 of the Act, tax is levied on every motor vehicle used or kept in the State of Tamil Nadu at the rate specified for such vehicle in the first schedule or in the second schedule or in the third schedule as the case may be. The Government may, by notification, from time to time, increase the rate of tax specified in the Schedules, provided that such increase,shall not exceed 50% of the rate specified in the Schedules.

4. In the year 1983, by amendment Act 27/1983, Rs.150/- was fixed per seat per quarter for Maxicabs with 6+1 capacity. By the subsequent amendment Act 25/1989, the quarterly tax was fixed at Rs.1000/- for Maxicabs with seating capacity 12+1. Again by amendment Act 33/199 1, the rate was fixed at Rs.125/- per seat per quarter. In terms of sub-section 2 of Section 3 the tax was increased to Rs.150/ per seat per quarter by amendment Act 36/1994 and to Rs.175/- per seat per quarter by the subsequent amendment Act 23/1999. In all these amendments, the increase was only less than 50% of the tax already collected, presumably on the basis of sub section 2 of Section 3 of the Act. By issuance of G.O.Ms. No.1184/2001 Transport Department dated 30.1.200 1, the Government issued the notification enhancing the tax from Rs.1 75/- per seat per quarter to Rs.250/- per seat per quarter. This enhance was also did not exceed 50% of the existing Tax. However, by the impugned Amendment Act 13/2003, which came into force on 19.5.2003 , the Government enhanced the tax from Rs.250/- per seat per quarter to Rs.500/- per seat per quarter viz.,an enhancement of 100%. The 10 0% enhancement is contrary to sub-section 2 of Section 3 of the Act.

5. Mr.G. Rajagopalan, learned senior counsel appearing for the petitioners in some of the Writ Petitions submitted that the tax is compensatory in character and the same is collected,considering the usage of the road of the vehicle, the amounts spent by the Government for laying the road and maintaining the same. The Tax levied should not be confiscatory in character. In this regard, the learned counsel would contend that considering the compensatory nature of the tax, the Legislature thought it appropriate to enable the Government to enhance only by 50% of the existing tax at a time by notification under subsection 2 of Section 3 of the Act. By amending the Schedule to enhance the tax from Rs.250/- per seat per quarter to Rs.500/- per seat per quarter, the respondents had devised a method to achieve the confiscatory purpose inasmuch as the tax was increased from Rs.175/- per seat per quarter to Rs.250/- per seat per quarter only in the year 2001 and within a span of two years, by invoking sub-section2 of Section 3 of the Act, the Government could enhance only by 50% viz., from Rs.250 /- per seat per quarter to Rs.375/- per seat per quarter. By such devised method and the cloak adopted by the Legislature by amending the Schedule, the right of the members of the petitioners-Associations guaranteed under Article 19(1)(g) of the Constitution of India is deprived. Inasmuch as the schedule in respect of the tax applicable to other vehicles including Omni bus (Contract Carriage) is not

amended and the tax are not enhanced, by amendment to the schedule only in respect of Maxicabs, the members of the Petitioners-Associations are alone discriminated offending Article 14 of the Constitution of India. Further, the enhancement of tax is unreasonable and arbitrary.

6. The learned counsel would further submit that as per Section 10 and 17 of the Act, the State of Tamil Nadu should constitute a fund called the Tamil Nadu Rural Development Fund to which such percentage of tax not exceeding ten per cent as may from time to time, be fixed by the Government shall be credited. As per Section 17,after deducting the amount credited to the Tamil Nadu Rural Road Development Fund and the expenses for collecting the tax under the Act and the costs incurred by the Government in exercising the administrative functions in regard to control of motor vehicles, the balance shall be apportioned between the Government and the local authorities . However, the enhancement of tax is only on the ground that the Government have decided to constitute a road maintenance fund. The allocation of tax to the road maintenance fund, would be outside the Provisions of the Act,viz., the enhancement of tax was only for different purpose and not to achieve the object of the Act. Hence it is not compensatory but is confiscatory.

7. Mr.T.R. Rajagopalan, learned Senior Counsel appearing for the petitioner in W.P.No.18659/2003, submitted that the Government had not taken into consideration while enhancing the tax, the cost of the vehicle, cost of petrol, cost of spare parts etc., and the reasons adopted to the vehicles used in Chennai, cannot be made applicable to the vehicles used in Mofussil. All vehicles irrespective of the fact that they are used in Chennai/Cities or mofussil have been treated alike. He would also contend that the Government had not taken into consideration the numbers of Maxicabs permitted in the State of Tamil Nadu and the actual usage of roads while enhancing the tax. Unless exercise is taken by considering the above before the enhancement of tax, the enhancement of Tax at 100% must be held to be unreasonable as the enhancement is not supported by any reason or material. Mr.R.N. Amarnath, learned counsel on record for the petitioner in W.P.No.18 659 of 2003 submitted that inasmsuch as more than 50% of the enhancement of tax is to be paid from the profit made by the members of the Petitioner associations, it must be considered as confiscatory and hence, the amendment should be declared as illegal.

8. Mr.S. Govindaraman, learned counsel appearing for the petitioner in W.P.No.18013/2003, submitted that there was no proper discussion on the amendment on the floor of the House and in the absence of proper discussion, this Court can reconsider such decision of the Legislature in enhancing the tax. All other learned counsel appearing for other petitioners adopted the arguments by learned senior counsel Mr. G. Rajagopalan and Mr. T.R. Rajagopalan.

9. In reply to the above submissions, Mr. R. Muthukumaraswamy, learned Additional Advocate General would submit that that in exercise of the power under Entry 56 of List II of Schedule VII, the Government is empowered to legislate laws levying Taxes on goods and passengers carried by road or inland water ways. In exercise of the said power only, the Tamil Nadu Motor Vehicles Taxation Act, 1974 was enacted. The power to enact law includes the

power to amend the provisions of the said enactment. By exercise of such power, by the Amendment Act, the Schedule to the Act has been amended. Hence, no exception could be taken to the legislative competency of the Government to amend the schedule. Insofar as the grievance of the members of the Petitioners-Associations as to the enhancement of the tax on the ground that the enhancement is not compensatory or regulatory, but is confiscatory,the learned Additional Advocate General submitted that the enhancement was only on the basis of the actual expenses incurred for laying road,maintenance of the same, future laying of roads including the expenses incurred by the State for regulating the traffic etc., In such event,the argument as to the confiscatory nature of tax is totally misconceived. The learned Additional Advocate General further submitted that in the matter of tax, there is no question of infringement of the members of the Petitioners-Associations to carry on trade guaranteed under Article 19(1)(g) and the same is not applicable to Tax Laws. Insofar as the plea of discrimination on the ground of violation of Article 14, the learned Additional Advocate General submitted that there is no discrimination in imposing tax on the Maxicabs as the enhancement is made applicable to all the Maxicabs in Tamil Nadu. The imposition of Tax in respect of other vehicles cannot be equated to the enhancement by Tax in respect of Maxicabs. The plea of discrimination may be available to the petitioners only if there is discrimination among the members of the Petitioners-Associations.

10. The learned Additional Advocate General further submitted that inasmuch as the State Government has got power to amend the Schedule, plea as to the motive for amendment on the ground that only to avoid sub-section 2 of Section 3 of the Act for enhancement of tax by 50% , the State has brought in the amendment to enhance the tax by 100% is impermissible as the motive is immaterial in tax matters.

11. In view of the above rival submissions, the following points arise for consideration.

1) Whether the State Government is empowered to amend the Schedule to Act?

2) Whether by such amendment, the State is empowered to enhance the tax more than 50% though the Government was empowered enhance the tax by notification only by 50% under sub-section 2 of Section 3 of the Act?
3) Whether the enhanced tax is regulatory/compensatory or confiscatory in character?
4) Whether by the impugned amendment Act,the right of the members of the Petitioners-Associations to carry on trade under Article 19(1)(g) is infringed?

5) Whether by the impugned Amendment Act, the Government have discriminated the members of the Petitioners- Associations?
6) Whether the enhancement is either arbitrary or unreasonable?

12. Before entering into discussion upon the above points, it would be appropriate to first consider the circumstances this Court could interfere in Tax enactment, more particularly, the quantum of tax levied by the Governmentt. Mr.G.Rajagopal, learned senior counsel relying upon the judgment of the Apex Court reported in RAI RAMAKRISHNA VS STATE OF BIHAR (A.I.R.1963 Supreme Court 1667) submitted that where it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax or that it is confistatory, Courts would be justified in striking down the impugned statute as unconstitutional. Courts would also be justified only in taking the view that in substance the taxing statute is a cloak adopted by the Legislature for achieving its confiscatory purposes. In reply, Mr. R. Muthukumaraswamy, learned Additional Advocate General relied upon the judgment of the Apex court reported in STATE OF A.P. VS MCDOWELL AND COMPANY (A.I.R. 1996 SC 1627) and contended that law made by Parliament or State Legislature can be struck down by Courts on two grounds viz., 1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or any other constitutional provision.

13. From the law declared by the Apex Court, the following principles emerge. A statute can be struck down on the ground (1) lack of legislative competence and (2) violation of fundamental rights guaranteed in Part III of the Constitution or any other constitutional provision Subject to reasonable restrictions.(3) If the tax is confiscatory in nature. (4) When the enactment is challenged on the ground of violation of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. (5) A tax law cannot be struck down on the ground of violation of clauses (a) to (g) of Article 19 as the same is immaterial while judging the validity of the Tax laws.

14. Point No.1: The power of the State Government to enact a law on tax could be traced to entry 56 of List II of Schedule VII of the Constitution of India. In fact, such power of the State Government to enact a law on tax is not disputed by the Petitioners-Associations. By exercise of such power, the State has enacted the Tamil Nadu Motor Vehicles Taxation Act, 1974 and the same is also not disputed.

Section 3 of the Act enabling the State to collect Tax reads as under:

Levy of Tax:(1) Subject to the provisions of sub-Section (2) tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the First Schedule or in the Second Schedule or in the Third Schedule as the case may be"

(2) The Government may, by notification, from time to time, increase the rate of tax specified in the Schedules;

Provided that such increase, by notification, under

sub-section shall not, in the aggregate, exceed
fifty per cent of the rate specified in the First
Schedule or in the Second Schedule or in the Third
Schedule as the case may be"

15. Insofar as the Maxicabs are concerned, Item 2 (1)(d) of the First Schedule is applicable. By the said Schedule, a sum of Rs.175/- was fixed per seat per quarter for Maxicabs with the capacity of more than six persons but not more than thirteen persons including the driver. There was a further enhancement of the tax from Rs.175/- to Rs.2 50/- by the Government Order notified on 30.1.2001,in terms of sub-section 2 of Section 3 of the Act, by the impugned amendment, the tax was enhanced from Rs.250/- to Rs.500/- per seat per quarter by amending the schedule. The power of the State Government to amend the said Schedule in fixing the quarterly tax per seat is not questioned. Hence it must be held that in exercise of power under Entry 56 of Lists II of Schedule VII the Government is empowered to enact law on Motor Vehicle Tax including the power to amend the provisions of such enactment including the schedule as was done in this case. Infact the powers of the State to levy tax was upheld by the Apex Court in the Judgment reported in A.I.R. 1975 SC 583(G.K.Krishnan vs State of Tamil Nadu) Power of the Legislature to levy Taxes on Goods and Passenger vehicles, to devise Machinery for recovery of said Taxes and exercise by the said power to levy Taxes both

prospectively and retrospectively has been upheld by the Apex Court in the Judgment reported in Rai Ramakrishna and others vs State of Bihar (A.I.R. 1963 SC 1667). Hence Point No.1 is answered accordingly.

16. Point No.2: By the impugned amendment, the State has amended the Schedule fixing the rate of tax to be collected under Section 3(1) of the Act. An argument was advanced by contending that inasmuch as sub-section 2 of Section 3 of the Act empowers the State Government to enhance the tax only by 50%, the said rest riction on the Government is equally applicable to the Legislature. This argument is totally misconceived. It is to be borne in mind that while the Legislature fixed the rate of tax in the Schedule to be collected under subsection (1) of Section 3, sub-section 2 of Section 3 also empowered the Government to issue Notification for enhancement of Tax only by 50% of Tax already fixed in the Schedule. Such restriction imposed in sub-section 2 of Section 3 is applicable only when the Government by Notification enhance the tax fixed in the Schedule to be collected under sub-section(1) of Section 3. Merely because a restriction is imposed on the Government to enhance the tax only by 50% by notification, such restriction shall not in any way either take away or curtail the power of the Government to amend the schedule. Such interpretation , if placed, would amount to curtail the very power of the Government to amend the schedule in exercise of the power conferred under Entry 56 of List II of Schedule VII. The argument of Mr.G.Rajagopalan, learned senior Counsel that even in case of amendment, the State Government is empowered only to enhance the tax by 50% of the existing Tax cannot be accepted as there is no such embargo placed on the Government in the Constitution. In the absence of such restriction on the Government while amending the schedule, placing interpretation over the power

of the Government, as if a restriction is imposed to enhance the tax by 50% only by way of amendment would be adding something into the Act which would defeat the very scheme of the Tax law. Hence, I find no merit in the contention of the learned senior Counsel Mr.G. Rajagopalan that the State Government is not empowered toamend the schedule to enhance the tax more than 50% of the existing Tax. Point No.2 is answered accordingly.

17. Point No.3: The next point to be considered is as to whether the enhanced tax is regulatory/compensatory or confisfactory?

18. What is compensatory or confisfactory also came up for consideration in the judgment reported in AUTOMOBILE TRANSPORT LIMITED VS STATEOF RAJASTHAN (A.I.R. 1962 SC 1406) A Bench consisting of 7 learned Judges of the Apex Court has held in para 19,20 and 21 as follows:

para 19: An examination of these provisions indicates clearly enough that the taxed imposed are really taxes on motor vehicles which use the roads in Rajasthan or are kept for use therein, either throughout the whole area or part of it. The tax is payable by all owners of motor vehicles,traders or otherwise. In dealing with the question whether these taxes were reasonable restrictions on the right of individuals to move freely throughout the territory of India etc., the High Court said:

"In this connection it is well to remember that the State maintains old roads, and makes new ones, and these roads are at the disposal of those who use motor vehicles either for private purposes or for trade or commerce. This naturally costs the State. It has, therefore, to find funds for making new roads and maintenance of those that are already in existence. These funds cannot only be raised through taxation, and if the State taxes the users of motor vehicles in order to make and maintain roads, it can hardly be said that the State is putting unreasonable restrictions on the individuals' right to move freely throughout the territory of India, or to practice any profession or to carry on any occupation, trade or business. We have looked into figures of income and expenditure in this connection of the Rajasthan State to judge whether this taxation is reasonable. We find that in 1952-53 income from Motor vehicles taxation under the Act was in the neighbourhood of 34 lakhs. In that very year the expenditure on new roads and maintenance of old roads was in the neighbourhood of 60 lakhs In 1954-55, the estimated income from the tax was 35 lakhs, while the estimated expenditure was

over 65 lakhs. It is obvious from these figures that the State is charging from the users of motor vehicles something in the neighbourhood of 50% of the cost it has to incur in maintaining and making roads"

The High Court further pointed out that in the case of private motor cars the tax was Rs.12 per seat and for an ordinary five seater car, it came to Rs.60 per year. On payment of this amount the owner of the motor vehicle could use the car anywhere in Rajasthan and all the roads were open to him. In the case of goods vehicle, the tax was Rs.2000 per year for a goods vehicle with a load capacity of over five tonnes i.e. over 135 maunds. Assuming that such a vehicle could be reasonably used for 200 days in a year, the tax amounted to Rs.10 per day for about 140 maunds of goods carried over any length of the roads in Rajasthan. This worked out to about Rs.1 for 14 maunds i.e. almost an anna a maund. If the Act and the Schedules appended thereto are examined in this manner, it will be noticed that the tax imposed really a tax for the use of the roads in Rajasthan and it cannot be said that it hinders the free movement of trade commerce and intercourse. The taxes are compensatory taxes which instead of hindering trade,commerce and intercourse facilitate them by providing roads and maintaining the roads in a good state of repairs. Whether a tax is compensatory or not cannot be made to depend on the preamble of the statute imposing it. Nor do we think it would be right to say that a tax is not compensatory because the precise or specific amount collected is not actually used in providing any facilities. It is obvious that if the preamble decided the matter, then the mercantile community would be helpless and it would be easiest thing for the Legislature to defeat the freedom assured by Article 301 by stating in the preamble that it is meant to provide facilities to the tradesmen. Likewise, actual user would often be unknown to tradesmen and such user may at some time be compensatory and at others not so. It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having the use of certain facilities for the better conduct of their business and paying not

patently much more than what is required for providing the facilities. It would be impossible

to judge the compensatory nature of a tax by a meticulous test, and in the nature of things that cannot be done.

Para20: Nor do we think that it will make any difference that the money collected from the tax is not put into a separate fund so long as facilities for the trades people who pay the tax are provided and the expenses incurred in providing them are borne by the State out of whatever source it may be. In the cases under our consideration the tax is based on passenger capacity of commercial buses and loading capacity of goods vehicles; both have some relation to the wear and tear caused to be roads used by the buses. In basing the taxes on passenger capacity or loading capacity, the Legislature has merely evolved a method and measure of compensation demanded by the State, but the taxes are still compensation and charge for regulation.

Para 21: We wre addressed at some length on the distinction between a tax, a fee and an excise duty. It was also pointed out to us that the taxes raised under the Act were not specially earmarked for the building or maintenance of roads. We do not think that these considerations necessarily determine whether the taxes are compensatory taxes or not. We must consider the substance of the matter and so considered, there can be no doubt that the taxes imposed are no hindrance to the freedom of trade, commerce and intercourse. If a statute fixes a charge for a convenience of service provided by the State or an agency of the State, and imposes it upon those who choose to avail themselves of the service or convenience, the freedom of trade and commerce may well be considered unimpaired. In such a case the imposition assumes the character of remuneration or consideration charged in respect of advantage sought and received. In Armstrong vs State of Victoria (1957)99 CLR 28, Dixon C.J. Said
'The reason, as I venture to suggest, simply is that, without the bridge, the aero-dromes and airways, the wharves and the sheds,the respective inter-State operations could not be carried out and that the charges serve

no purpose save to maintain these necessary
things at a standard by which they may continue
However, it may be stated, the ultimate ground
why the exaction of the payments for using the
instruments of commerce that have been mentioned
is no violation of the freedom of inter-State
trade lies in the relation to inter-State trade
which their nature and purpose give them. The
reason why public authority must maintain them
is in order that the commerce may use them
and so for the commerce to bear or contribute
to the cost of their upkeep can involve no
detraction from the freedom of commercial
intercourse between States"

The learned Chief Justice reiterated the same
view in Common wealth Freghters Proprietary
Limited vs Sneddon (1959) 102 CLR 280 at page
291"

19.In G.K. KRISHNAN VS STATE OF TAMIL NADU (A.I.R. 1975 SC 583)
while considering the validity of imposition of enhanced tax on contract
carriages by G.O.Ms. No.2044 dated 20.1.1971,the Supreme Court has held as
under:

para 15: Regulations like rules of traffic facilitate
freedom of trade and commerce whereas restrictions
impede that freedom. The collection of toll or tax for
the use of roads, bridges, or aerodromes, etc., do
not operate as barriers or hindrance to trade.
For a tax to become a prohibited tax, it has to be
direct tax, the effect of which is to hinder the
movement part of the trade. If the tax is compensatory
or regulatory, it cannot operate as a restrictions
on the freedom of trade or commerce"
Para 17: Strictly speaking, a compensatory
tax is based on the nature and the extent of use
made of the roads,as,for example, a mileage or
ton-mileage charge or the like, and if the proceeds
are devoted to the repair,upkeep, maintenance and
depreciation of relevant roads and the collection
of the exaction involves no substantial inter-
ference with the movement. The expression
"reasolnable compensation" is convenient
but vague. The standard of reasonableness
can only be in the severity with which it bears
on traffic and such evidence of extravagance
in its assessment as come from general considera-

tions. What is essential for the purpose of securing freedom of movement by road is that no pecuniary burden should be placed upon it which goes beyond a proper recompense to the state for the actual use made of the physical facilities provided in the shape of a road The difficulties are very great in defining this conception. But the conception appears to be based on a real distinction between remuneration for the provision of a specific physical service of which particular use is made and a burden placed upon transportation in aid of the general expenditure of the State. It is clear that the motor vehicles require, for their safe,efficient and economical use, roads of considerable width, hardness and durability; the maintenance of such roads will cost the government money"

20. But the Supreme Court in the very same Judgment framed the question for consideration as to Whether the tax is compensatory tax and has held as follows:

"But because the users of vehicles generally, and of public motor vehicles in particular, stand in a special and direct relation to such roads, and may be said to derive a special and direct benefit from them , it seems not unreasonable that they should be called upon to make a special contribution to their maintenance over and above their general contribution as taxpayers of the State. If, however, a charge is imposed, not for the purpose of obtaining a proper contribution to the maintenance and upkeep of the road, but for the purpose of adversely affecting trade or commerce then it would be a restriction on the freedom of trade, commerce or intercourse"

21. In SECRETARY TO GOVERNMENT OF HOME DEPARTMENT, TAMILNADU AND OTHERS VS SALEM DHARMAPURI OMNI BUS ASSOCIATION AND OTHERS (A.I.R. 1975 SC 1006) the Apex Court while considering the enhancement of Tax by Government order held as follows:

"We have already indicated in our Judgment in G.K. Krishnan vs State of Tamilnadu (Reported in A.I.R. 1975 SC 583) that if the Government has power to impose the tax, the motive or the purpose with which that power has been exercised is quite immaterial. Section 17 gives power to the State Government to amend Schedule II or III by rules. A draft of any rule has to be laid opn the table of the Legislative Assembly and the rule shall not be made unless the Assembly approves the draft.

Neither the draft of the rule approved by the
Assembly nor the rule as framed by Government
contained the purpose of imposing a higher tax
on contract carriages. It was only when the
rule was published that the purpose of imposing
the tax viz., to eliminate the unhealthy
competition from contract carriages, was added
If the tax was otherwise legal, it would not
become illegal merely because it was intended
to be used also as an instrument to regulate
an activity within the power of the State"

we have already held in our judgment referred
to in the preceding paragraph that the tax imposed
on contract carriages by notification No.2044
Home dated 20.9.1971 is compensatory in character
and, therefore, the Government, in the exercise
of its delegated power was competent to impose
the same without, in any way, restricting the
freedom of trade, commerce and intercourse.
If that be so, we see no reason to hold that
the tax imposed by the two notifications in
question is not compensatory in character
and it was not contended otherwise before
the High Court or here"

22. The same principle is also adopted by the Supreme Court in the judgment reported in INTERNATIONAL TOURIST CORPORATION VS STATE OF HARYANA (A.I.R. 1981 SC 774). Merely because the specified amount collected is not actually used to provide any facility and the actual use would also be unknown presumes the Tax cannot be considered as confisfactory. The argument of Mr.G. Rajagopalan is that if the amount is diverted to some other purpose, viz., the road maintenance fund to be constituted by the State Government which is outside the provisions of the Act it is confisfactory to that extent. The answer lies in the observation of the Supreme Court in AUTOMOBILE TRANSPORT LIMITED CASE cited supra, wherein it is seen that merely because the tax collected is diverted and the actual user would be unknown, the validity of an enacted tax law cannot be questioned. That apart, it must be seen that Section 10 of the Act empowers the State of Tamil Nadu to constitute a fund called Tamil Nadu Rural Road Development Fund. Of course, the State of empowered to collect such percentage of tax not exceeding 10% of the said fund. Mr.G.Rajagopalan learned senior counsel placed reliance on Section 17 and contended that the State is not empowered to divert the tax collected except the manner provided under section 17 of the Act. The said Section reads as follows:

17. Utilisation of the proceeds of the Tax:
After deducting:(i) the amount credited to the Tamil
Nadu Rural Road Development under sub-section(1)
of Section 10;
(ii) the expenses of collecting the tax under this

Act and
(iii)the costs incurred by the Government in exercising their administrative functions in regard to the control of motor vehicles in this State, the balance shall be apportioned between the Government and local authorities and such apportionment shall be in accordance with such rules as may be made in this behalf"

23. Sub-section (1) of Section 17 enables the State Government to collect the amount contemplated under Section 10 of the Act. Subsection 2 relates to expenses for collecting the amount towards tax. Sub-section 3 of section 17 is relevant. In terms of sub-section 3 of Section 17, the State is empowered to utilise the tax towards costs incurred by the Government in exercising their administrative functions in regard to the control of motor vehicles in the State with further entitlement to the State that the balance shall be apportioned between the Government and the local authorities. In sofar as the expenses incurred in exercising the Administrative functions in regard to the control of motor vehicles in the State, it need not be necessarily restricted only to laying roads and maintenance of roads. The proper approach as to how the tax collected is spent with reference to its compensatory character has been well settled by the Supreme Court of U.S.A. which has been referred to by the Supreme Court in para 21 of the judgment reported in A.I.R. 1975 SC 583 reads as follows:

"The Supreme Court of U.S.A takes the view that the validity of a tax on vehicles must be determined not by way of a formula but rather by the result, and in several cases, the Court has upheld the validity of a flat fee not geared to weight, mileage or seating capacity, provided the fee is reasonable in amount and is not shown to be in excess of the compensation for the use of the roads: see Morf.V. Bingaman (1935) 298 US 407 and Aero Mayflower Transit Com., vs Board of R.R. Commrs, (1947) 332 ;US 497. According to that Court, since the purpose of the tax imposed by the state on motor vehicles using its road is to obtain from them a fair contributive share of the cost of constructing and maintaining the public highways and facilities furnished and to defray the expense of administering the police regulations enacted for the purpose of ensuring the public safety, the method used by the state for imposing tax does not seem to be of great significance; but such taxation however, can only be for the purpose of compensating the state for the construction and maintenance and expenses in regulating motor traffic, and it must affirmatively appear that such is the purpose of the legislation sought

to be held. But, once a proper purpose is established, the state has considerable discretion in the method, measurement and amount of the tax"

24. Quoting the above judgment, the Supreme Court in para 22,23 and 24 has also approved the above view. In view of the above, the State is empowered to utilise the tax collected for the purposes like regulating the traffic and also for laying of roads and maintenance of the same including creation of Rural Development Fund as the same would fall within sub-section 3 of Section 17 of the Act which empowers the State to spend the tax towards the costs incurred by exercising their administrative functions in regard to the control of motor vehicles in the State. Hence the submission of Mr.G.Rajagopalan, learned senior counsel that the State cannot utilise the fund except as provided under Section 10 cannot be accepted as in my view Tamil Nadu Rural Development Fund would fall within sub-section 3 of Section 17 of the Act. If the amendment islooked from this angle,the Tax levied by the Amendment Act cannot be held to be confiscatory but it is only Regulatory/compensatory. Point No.3 is answered accordingly.
25. Point No.4: Coming to the last submission as to the impugned amendment, infringes the fundamental right of the members of the petitioners-associations to carry on trade, the answer is in para 29 of the judgment of the Apex Court in G.K. Krishnan's case.

"We have already held that the tax is compensatory in character. If that is so, we do not think that it can operate as an unreasonable restriction upon the fundamental right of the appellants to carry on their business, for, the very idea of a compensatory tax is service more or less commensurate with the the tax levied. No citizen has a right to engage in trade or business without paying for the special services he receives from the State. That is part of the cost of carrying on the business"

Insofar as the challenge to the Tax laws, plea of violation of Article 19(1)(g) is immaterial as the tax is compensatory. Accordingly, Point No.4 is answered by holding that plea of infringement of Act 19(1)(g) is immaterial in Tax Laws and the contention in this regard must fail.

26. Point Nos. 5 and 6: Coming to the plea of discrimination and infringement of Article 14 of the Constitution of India, it is to be seen that on facts, there is no discrimination insofar as the enhancement of tax from among the members of the petitioners-associations viz., owners of Maxicabs. Plea of discrimination may be available in case of different yardstick adopted among the same category of vehicles. The Apex Court has held in K.T. MOOPIL NAIR VS STATE OF KERALA(A.I.R.1961 SC 552) that Taxing Statute is not wholly immune from attack on the ground of Article 14 of the Constitutio n, Para 7 of this judgment reads as under:
If the taxation, generally speaking imposes

a similar burden on every one with reference to that particular kind and extent of property , on the same basis of taxation the law shall not be open to attack on the ground of inequality, even though the result of the taxation may be that the total burden on different persons may be unequal. Hence, if the legislature has classified persons of properties into different categories which are subjected to different rates of taxation with reference to income or property, such a classification is unequal. Similarly,different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Art. 14 will not be in the way of such a classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It must, therefore, be held that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14 though the Courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the Court might think more just and equitable. The Act has, therefore, to be examined with reference to the attack based on Article 14 of the Constitution."

27. In this case, there is no discrimination in imposing different Tax on the Maxicabs. Plea of discrimination shall be considered on the facts of each case. Moreover, a similar the plea of discrimination was also negatived by the Apex Court in G.K. Krishnan's case in para 3 6 which reads as under:

It cannot be said that a classification made on the basis of the capacity of the contract carriages to run more miles is unreasonable because those carriages will be using the road more than the stage carriages which have got a time schedule, specified routes and minimum and maximum number of trips. A person who challenges a classification as unreasonable has the burden of proving it. There is always a presumption that a classifi- cation is valid, especially in a taxing statute. The ancient proposition that a person who challenges the reasonableness of a classifi-

cation , and therefore, the constitutionality of the law making the classification, has to prove it by relevant materials, has been reiterated by this Court recently. See Amalgamated Tea Estates vs State of Kerala (1974) 4 SCC 415=(A.I.R.1974SC 848) and Murthy Match Works vs Assistant Collector of Central Excise (1974) 4 SCC 428=)A.I.R. 1974 SC 497). In the context of commercial regulation, Article 14 is offended only if the classification rests on grounds wholly irrelevant to the achievement of the objective and this lenient standard is further weighted in the State's favour by the fact that a statutory discrimination will not be set aside if a State of facts may reasonably be conceived by the Court to justify it"

Hence the challenge to the impugned amendment on the ground of violation of Article 14 discriminatory cannot be accepted.

28. As to the plea of unreasonableness, Mr.G.Rajagopal, learned senior counsel would place reliance upon the Budget provisions and contended that what was sought to be spent on the road is only Rs.180 crores but in the counter affidavit a different figure is shown as if the estimate expenses for 2003-2004 is Rs.1052.16 crores as against the expenses incurred by the Government for the year 2002/2-3 was only Rs. 567.50 crores. The income from the Motor Vehicles Tax Act for the year 2003-2004 is only Rs. 692.00 crores which is approximately 40 % less than the estimated expenditure on road maintenance. The learned counsel submitted that the expenditure to be incurred by the Government is Fredy by Agencies and the figures as to the expenditure is not supported by any materials. This submission is also nothing but misreading of the stand of the respondent. Going by the budgetary provision, the Government estimated the receipt on tax at Rs.180 crores as against the even admitted expenditure of Rs.692 crores. In considering the constitutionality of the tax, the question as to whether the surplus budget would be relevant came up for consideration before the Apex Court in the judgment reported in MALWA BUS SERVICE PRIVATE LIMITED VS STATE OF PUNJAB (A.I.R.1983 SC 634) That was a case where the Apex Court considered the enhancement of tax on stage carriages,by Notification issued in terms of Section 3(1) and 3-A of Punjab Motor Vehicles Taxation Act,1924. A similar argument was put forth as to the surplus budget in challenging the enhancement of tax. Repelling the challenge, the Supreme Court held that such challenge was not available to the tax payer like the members of the PetitionersAssociation. Infact a similar challenge was made before the Apex Court in the judgment reported in MEENAKSHI VS STATE OF KARNATAKA (A.I.R. 19 83 SC 1283) and the same was also repelled. Hence Point Nos. 5 and 6 are answered by holding that by impugned amendment, the members of the petitioner-association are discriminated nor the enhancement of tax is unreasonable.

29. Insofar as the submission of Mr.T.R.Rajagopalan, learned senior counsel appearing for the petitioner in W.P.No.18659/2003 that the enactment is liable to be struck down as before enhancing the tax, the Government has not considered the costs of the vehicle, cost of petrol and cost of spare parts etc., it is to be seen that the tax being compensatory in character the Government is empowered to take into consideration of the expenses incurred towards laying the roads, maintenance of the same and for future laying of the roads as well as the expenses incurred towards exercising their administrative functions in regard to the control of motor vehicles in the State while fixing the rates of tax. Consideration as to the cost of petrol and spare parts cannot be a ground for fixing the tax. Tax being compensatory, the relevant consideration would be the expenses incurred by the State towards laying of roads maintenance of the same, expenses towards future laying of roads and maintenance. The expenses incurred or loss sustained by the Tax payer has no relevance in fixing the quantum of tax. In fact, the Apex Court has upheld the Mustard Oil (Price Control) order 1977 in the judgment reported in PREG ICE AND OIL MILLS VS UNION OF INDIA (A.I.R. 1976 SC 1296) on the ground that the loss in trade cannot be a ground to challenge the tax laws. The Apex Court in the subsequent judgment reported in MALWA BUS SERVICE PRIVATE LIMITED VS STATE OF PUNJAB (A.I.R. 1983 SC 634) has quoted the said judgment with approval.

30. Factually in this case, as against the receipt of Rs.692 crores towards Motor Vehicles Act for the year 2003-2004, the estimated expenditure of the Government towards improvement of roads, laying of new roads and construction of bridges is Rs.794.60 crores and towards maintenance a further sum of Rs.257.56 crores is estimated and therefore, the estimated expenditure on road programme is Rs. 1051.12 crores. Hence, merely because of claims as to the loss to the members of the petitioners-association by virtue of enhancement of tax, as the State Government has not taken into account the expenses incurred by the members of the petitioners-associations it cannot be a ground to question the impugned Amendment. Further, the submission of Mr.R.N. Amarnath, learned counsel that the profit of the members of the petitioners-associations is taken away by enhancement of tax over and above 50% of the existing tax also cannot be accepted.

31. Mr.S. Govindaraman, learned counsel appearing for the petitioner in W.P.No.18013/2003 submitted that before enacting the impugned amendment, there was no proper discussion on the floor of the House. Law is well settled that the functions of the house and the manner in which it is conducted, are all not matters fall for consideration by this Court in exercise of the power under Article 226 of the Constitution of India. The proceedings before the Legislature while enacting a law cannot be the subject matter of either discussion or any decision of the Courts. In that view of the matter, the submission of the learned counsel in this regard is liable to be rejected at the outset.

32. For the above foregoing reasons, I do not find any merit in the challenge to the impugned amendment. Accordingly, all the Writ Petitions fail

and are dismissed. No costs. The connected W.M.Ps are also dismissed.

Index: Yes
Website: Yes

vbs

To

1. The State of Tamil Nadu rep. By
its Secretary, Home(Transport) Department
Fort St. George, Chennai.9.

2. The Transport Commissioner-cum-State
Transport Authority
Chennai.5.

3. Regional Transport Officer
Namakkal.

4. Regional Transport Officer
Tiruchengodu

5. Regional Transport Officer
Salem

6. Regional Transport Officer
Tiruchi